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WM. R. STANSBURY
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# TRANSCRIPT OF THE RECORD.

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. [redacted] 1924

[redacted]

vs.

[redacted]

PETITION FOR WRIT OF CERTIORARI AND
TRANSCRIPT OF RECORD.

IN THE

# SUPREME COURT OF THE UNITED STATES

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THE MISSOURI PACIFIC RAILROAD COMPANY, A CORPORATION,
PETITIONER,
VS.
ROY STROUD,
RESPONDENT.
No. 547.

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## PETITION FOR WRIT OF CERTIORARI.

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To the Honorable, The Supreme Court of the United States:

Your petitioner, Missouri Pacific Railroad Company, a corporation, presents this, its petition praying that a writ of *certiorari* be granted, directing the Springfield Court of Appeals of the State of Missouri to certify to this Honorable court for its review, the record of said court in the case of Roy Stroud, Respondent vs. Missouri Pacific Railroad Company, a corporation, appellant, numbered 3245; and as grounds for this application petitioner respectfully shows to this court that Missouri Pacific Railroad Company is a railroad corporation organized and existing under the laws of the State of Missouri; is a common carrier of freight and passengers

through the State of Missouri and other States; that on January 25, 1921, there was filed in the Circuit Court of Ripley County, Missouri, a petition in the cause above mentioned whereby the said Roy Stroud sought to recover from Missouri Pacific Railroad Company under the provisions of Section 9985 of the Revised Statutes of Missouri, penalty provided by Section 9990 of the Revised Statutes of Missouri, of the revision of 1919, viz., three times the actual damages resulting to him by reason of an undue or unreasonable preference or advantage given by the carrier to other shippers over the said Roy Stroud, in the matter of furnishing cars for shipment of certain lumber owned by him. The sections of the Missouri Statute above referred to are as follows:

> "Section 9985. Discrimination Between Persons or Localities Prohibited.—It shall be unlawful for any such common carrier to make or give any undue or unreasonable preference or advantage to any particular person, company or firm, corporation or locality, in the transportation of goods, wares and merchandise of any character, or to subject any particular person, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage with respect to such transportation; and all such common carriers shall afford equal facilities for the interchange of traffic between their respective lines, and for receiving, forwarding and switching cars and delivering property to and from their lines, and to and from other lines and places connected therewith, and shall not discriminate in their accommodation, rates or charges between such connecting lines and places. But this provision shall not be construed as requiring such common carriers to give the use of their tracks or terminal facilities to other common carriers engaged in a similar business."

> "Section 9990. Penalty—Triple Damages for Violation of This Law.—In case any such common carrier shall do or cause to be done any act or thing in Sections 9980 to 9994, inclusive, prohibited or declared to be unlawful, or shall omit to do any act or thing in said sections required to be done, then such common carrier shall be liable to the person or persons injured thereby for three times the amount of damages sustained in consequence of the violation of the provisions of said sections, together with a reasonable attorney's fee, to be

fixed by the court, which fee shall be taxed and collected as part of the costs in the case."

Your petitioner further states that said cause was duly tried in the Circuit Court of Ripley County, Missouri, and a verdict rendered in favor of the plaintiff, Stroud, and against the defendant, Missouri Pacific Railroad Company, for the sum of $1,000; whereupon the court as provided by said Section 9990 above set out, rendered judgment for Stroud in the sum of $3,000; that said cause was appealed to the Springfield Court of Appeals of the State of Missouri, where it was affirmed by said court on condition that the plaintiff remit $1,492.50. This remittitur was duly entered by plaintiff.

A timely motion for rehearing was duly filed in said Springfield Court of Appeals, which was by said court overruled on July 16, 1923. A certified transcript of the record of said Springfield Court of Appeals, consisting of the abstract of the record in said cause; the court's opinion therein, the motion for a rehearing filed by your petitioner, and the court's order overruling the same, are hereto attached and marked, respectively, Exhibits A, B, C and D.

The facts in the case, so far as they are material to this application, are: Stroud on June 12, 1920, ordered two cars from the agent of your petitioner at Oxly, Missouri, to be there delivered to him for the shipment of a quantity of lumber to the City of St. Louis, Missouri. It was claimed on the trial of the cause, and there was some evidence to that effect, that after the order for the two cars above mentioned was made by Stroud, other shippers ordered cars for the shipment of lumber from the same point to points outside of the State of Missouri; and that said last mentioned orders for cars were filled before the delivery by petitioner of the two cars to Stroud, resulting in discrimination, as it is claimed, in favor of interstate shippers and against Stroud, an intrastate shipper.

The Springfield Court of Appeals of Missouri filed its opinion in said cause in which it held that although an interstate shipper was given a preference over an intrastate shipper in the matter of furnishing cars, nevertheless the latter might recover from the carrier the penalty provided in Section 9990 of the Revised Statutes of Missouri, 1919, above set out, although the Congress of the United States of America had assumed control of the question by enacting the following Statute:

"That it shall be unlawful for any common carrier

subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Section 3 Transportation Act, 1920, passed February 28, 1920; 41 Stat. at Large, 479.

The opinion of said court held that the section just quoted was not applicable to the facts in this case.

Your petitioner further shows to the court that the Springfield Court of Appeals of the State of Missouri is the court of last resort in this case; that no appeal, writ of error, writ of *certiorari*, or other proceeding may be had whereby this case may be re-heard by the Supreme Court of the State of Missouri for the reason that the ruling of said Springfield Court of Appeals is not in conflict with a prior ruling of the Supreme Court of Missouri on the same question.

Your petitioner further states that in the decision of this cause the Springfield Court of Appeals of Missouri failed and refused to apply the Statute of the United States set out, *supra*, which is controlling upon the question involved here, for the reason that it controls all interstate shipments, and provides the penalty to be assessed, if any; thereby nullifying the sections of the Missouri Statute quoted above in so far as discrimination in favor of, or against, interstate shippers is concerned.

Your petitioner further states that the Springfield Court of Appeals in so holding ruled contrary to the holdings of the Supreme Court of the United States in the cases of C., R. I. & P. R. R. Co. vs. Hardwick Farmers Elevator Company, 226 U. S. 426, and Southern Railroad Company vs. Reid, 222 U. S. 242, which hold that respecting discrimination between shippers, the "power of the State over the subject-matter ceased to exist from the moment that Congress exerted its paramount and all-embracing authority over the subject".

Wherefore, the premises considered, your petitioner prays that this Honorable Court issue its writ of *certiorari* directed to the Springfield Court of Appeals of the State of Missouri, requiring that the complete record in said cause in said court and its judgment therein, together with the motion for a rehearing and the ruling of said court thereon, be certified to

this court and that this Honorable Court will thereupon proceed to correct the errors complained of and reverse the judgment of the said Springfield Court of Appeals of the State of Missouri, and give to your petitioner such other and further relief as the nature of the case may require and to the court may seem proper in the premises.

MISSOURI PACIFIC RAILROAD COMPANY,
Petitioner.
By EDW. J. WHITE,
JAMES F. GREEN and
J. C. SHEPPARD,
Its Attorneys.

State of Missouri, }
County of Butler. } ss.

J. C. Sheppard, being duly sworn, says that he is one of the attorneys for the above named petitioner, Missouri Pacific Railroad Company; that he has knowledge of the matters and things set forth in the above petition, and of the conduct and proceedings had in the above entitled cause; and that he verily believes that the facts as stated in said petition are true.

J. C. SHEPPARD,

Subscribed and sworn to before me this 11th day of September, A. D. 1923. My commission will expire on the 10th day of December, A. D. 1925.

ETHEL E. HIGGINS,
Notary Public within and for the County of Butler in the State of Missouri, residing at Poplar Bluff, Missouri.

(Seal.)